IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WA.No. 49 of 2007()

AGAINST THE JUDGEMENT IN WPC.16129/2006 Dated 22/08/2006
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APPELLANT/ PETITIONER.:

KANICHAI HOTELS PRIVATE LIMITED,
REPRESENTED BY THE DIRECTOR,
REJI K.VARGHESE, HOTEL SAJ LUCIA,
EAST FORT, THIRUVANANTHAPURAM.

BY ADV. SRI.P.GOPALAKRISHNAN NAIR

RESPONDENT/RESPONDENT

THE DIRECTOR,
DEPARTMENT OF TOURISM,
PARK VIEW,
THIRUVANANTHAPURAM.

BY SR. GOVERNMENT PLEADER SMT. R. MEERA.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

W.A. No. 49 of 2004

Dated, this the 11th day of July, 2007

JUDGMENT

H.L. DATTU, CJ.

Challenging the correctness or otherwise of the order passed by the learned Single Judge in W.P.(C) No.136 of 2004 dated 6th January, 2004, the petitioners in the writ petition have filed the present appeal.

2. A lorry bearing registration No.TN-31.V/3705 was checked by the check post authorities while it was passing through Amaravila Check Post. On inspection it was found that the said lorry was carrying liquor along with other goods. After such inspection and after drawing up the mahazar, the check post authority has handed over the lorry along with the goods to the Excise Authorities.

3. The Assistant Excise Commissioner has now passed an order (Ext.P3) inter alia directing the petitioner to furnish a bank guarantee for a sum of Rs.4,28,000/- for release of the goods found in the lorry. Aggrieved by the said order the petitioner was before this court in W.P.(C) No. 136 of 2004.

4. After hearing the parties to the lis, the court has disposed of the writ petition and in that has directed that the respondent in the writ petition to release the goods after accepting the bank guarantee for a sum of Rs.4,28,000/- that may be furnished by the petitioner. Further the court has observed in the order that the authorities under the Excise Act will complete the confiscation proceedings as early as possible and the bank guarantee furnished by the petitioner shall not be encashed till the completion of the proceedings.

5. Aggrieved by the order passed by the learned Single Judge, the

petitioner has filed the present appeal.

6. This court, while entertaining the writ appeal, has passed an interim order dated 16th January, 2004. In that the learned Judges had directed the petitioners only to execute a bond in favour of the 3rd respondent for a sum of Rs.4,28,000/-. Further they had directed the first appellant to file an affidavit of undertaking before this court, undertaking to pay an amount of Rs.4,28,000/- in case the 34 items of goods mentioned in Ext.P3 are found by this court to be liable for confiscation.

7. Learned counsel Sri. George Poonthottam appearing for the appellants would submit, that, what can be confiscated by the authorities under the Excise Act is clearly specified under section 65 of the Abkari Act and since the 34 items mentioned in Ext.P3 order is not any of the items mentioned in section 65 of the Abkari Act, the respondent could not have seized those goods and could not have directed the petitioner to furnish the bank guarantee for a sum of Rs.4,28,000/- for the release of the goods. The learned counsel has taken us through Ext.P3 order passed by the 3rd respondent and also the provisions of section 65 of the Abkari Act.

8. In Ext.P3 the Assistant Excise Commissioner has observed that at the time of inspecting the vehicle he had noticed that the 34 items that was being carried along with the contraband goods was used for the purpose of covering the contraband goods. Keeping in view the contents of Ext.P3, the learned Single Judge while disposing the writ petition has directed the petitioner to furnish the bank guarantee for release of the goods in question, pending further adjudication by the authorities under the Abkari Act.

9. Section 65 of the Abkari Act speaks of the goods which are liable for confiscation. The said provision is as under:

> "**What things liable to confiscation**:- In any case in which an offence has been committed under this Act, the liquor, drug, materials, still, utensil, implement or apparatus in respect or by means of which an offence has been committed shall be liable to confiscation.
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> Any liquor or intoxicating drug lawfully imported, exported, transported, manufactured had in possession or sold or toddy lawfully drawn or tapped along with, or in addition to any liquor, intoxicating drug or toddy, liable to confiscation under this section, and
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> the receptacles, packages and coverings in which any such liquor, intoxicating drug, materials, still, utensil, implement or apparatus as aforesaid is or are found, and the other contents, if any, of the receptacles or packages in which the same is or are found, and the animals, carts, vessels or other conveyances used in carrying the same,
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> shall likewise be liable to confiscation."

10. A reading of the provision would indicate that in a case in which an offence has been committed under the Act, the liquor, drug, materials, utensils, implements etc. are liable for confiscation. It does not stop there. In the said section it is further stated that the materials used for covering the liquor, drug and the contraband goods are also liable for confiscation.

11. In Ext.P3 order, there is a mention, that, the 34 items that were found in the lorry on the date of inspection were used for the purpose of covering the liquor that was being transported in the lorry bearing registration No. TN-31.V/3705. Therefore, the respondents have initiated proceedings for confiscation under section 67B of the Act. Under section 67B, before confiscation of the contraband goods, an opportunity of hearing requires to be given to the owner of the vehicle, person in charge of the vehicle or the owner of the goods in

the vehicle. When such an opportunity is given to the petitioners and others, they can definitely prove before the confiscating authorities that the 34 items mentioned in Ext.P3 were never used by the petitioners for the purpose of covering the contraband goods. If the petitioners are able to demonstrate that aspect of the matter, the 3rd respondent authority will definitely pass appropriate orders as envisaged under section 67B of the Act.

12. Having gone through Ext.P3 order passed by the 3rd respondent and the order passed by the learned Single Judge, we are of the opinion that the order passed by the learned Single Judge is perfectly justified. Accordingly, this writ appeal requires to be rejected and it is rejected.

13. Now a direction is issued to the 3rd respondent to complete the proceedings initiated by him under section 67B of the Act after affording an opportunity of hearing to the petitioners as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this court's order.

14. The interim order passed by this court on 16th January, 2004 will enure to the benefit of the appellants till the matter is decided by the 3rd respondent.

15. The observations made by us in the course of the order is only for the disposal of the writ appeal.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

mt/DK